

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

LUTHER RAYMOND ALSPACH,  
Plaintiff,  
v.

No. 3:14-cv-01488-HU

**FINDINGS AND  
RECOMMENDATION**

THE WASHINGTON COUNTY SHERIFF  
DEPARTMENT,  
Defendant.

HUBEL, Magistrate Judge:

The matter comes before the Court on Plaintiff Luther Raymond Alspach's ("Plaintiff") application (Docket No. 1) to proceed in forma pauperis and Plaintiff's motion (Docket No. 4) for appointment of pro bono counsel. Plaintiff's application (Docket No. 1) to proceed in forma pauperis is granted solely for the purpose of screening his complaint

**LEGAL STANDARD**

It settled law that a district court must perform a preliminary screening of an in forma pauperis complaint and dismiss any claims which: (1) fail to state a claim on which relief may be

1 granted; (2) are frivolous or malicious; or (3) seeks monetary  
2 relief against a defendant who is immune from such relief. 28  
3 U.S.C. § 1915(e)(2)(B); see also *Lopez v. Smith*, 203 F.3d 1122,  
4 1129 (9th Cir. 2000) (concluding that § 1915(e)(2)(B) applies to  
5 non-prisoners).

6 In order to state a claim for relief, a complaint must contain  
7 "a short and plain statement of the claim showing that the pleader  
8 is entitled to relief." FED. R. CIV. P. 8(a)(2). When reviewing  
9 the sufficiency of a complaint filed by a pro se litigant, the  
10 court must liberally construe the pleading and accept as true all  
11 of the factual allegations contained therein. *Erickson v. Pardus*,  
12 551 U.S. 89, 94 (2007). But "the tenet that a court must accept as  
13 true all of the allegations contained in a complaint is  
14 inapplicable to legal conclusions," *Ashcroft v. Iqbal*, 556 U.S.  
15 662, 678 (2009), and "[t]hreadbare recitals of the elements of a  
16 cause of action, supported by mere conclusory statements, do not  
17 suffice." *Id.* Rather, stating a claim requires "the plaintiff  
18 [to] plead[] factual content that allows the court to draw the  
19 reasonable inference that the defendant is liable for the  
20 misconduct alleged." *Id.*

21 Along similar lines, a district court may dismiss a claim as  
22 factually frivolous when the facts alleged "lack[] an arguable  
23 basis in law or in fact," *Neitzke v. Williams*, 490 U.S. 319, 325  
24 (1989), or when they "rise to the level of the irrational or the  
25 wholly incredible, whether or not there are judicially noticeable  
26 facts available to contradict them," *Denton v. Hernandez*, 504 U.S.  
27 25, 33 (1992). A claim may also "be dismissed as frivolous where  
28 a defense is obvious on the face of the complaint." *Harris v.*

Rodriguez, No. 1:12-cv-00891, 2012 WL 4210118, at \*4 (E.D. Cal. Sept. 18, 2012) (citing *Franklin v. Murphy*, 745 F.2d 1221, 1228-29 (9th Cir. 1984)).

## DISCUSSION

### A. The Complaint

Though it is far from clear, a review of Plaintiff's complaint suggests that he (1) may have been the subject of mental competency proceedings in Oregon state court; (2) is potentially not allowed to own or possess certain types of firearms; (3) had several firearms confiscated by unnamed individuals employed by the Washington County Sheriff's Department; (4) plead not guilty to a state charge of unlawful possession of a firearm; (5) was forcibly removed from his apartment by the Washington County Sheriff's Department the day after his arraignment; (6) "was appointed to [an] Oregon State Hospital [so he] could learn to cooperate with [his] public defender"; (7) had a television and computer, which "were there [at his apartment] for some time," "looted" by two unnamed individuals after he was taken into custody; and (8) is asserting claim(s) for violation of his constitutional rights (e.g., the right to bear arms).<sup>1</sup>

The defendants listed in the body of Plaintiff's complaint are: "Captain, Washington County Sheriff"; "Lieutenant Washington County Sheriff"; "Corporate Section: Sheriff Dispatch"; "District

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<sup>1</sup> The civil cover sheet indicates that Plaintiff is filing this case under the Eleventh Amendment, and it describes Plaintiff's cause of action as "sheriff department involved in constitutional damages." At the same time, however, "Property Damage Product Liability" is checked as the "Nature of Suit" on the civil cover sheet.

1 Attorney, Washington County"; "Mr. Murry Rau[,] Violent Crimes  
2 Unit"; and "Unknown[,] Washington County Jail . . . [who is] not  
3 currently [a] party involved in this case." The only defendant  
4 listed in the caption of the complaint, however, is the Washington  
5 County Sheriff's Department.

6 Plaintiff's complaint invokes this Court's federal question  
7 jurisdiction, yet it fails to explicitly invoke 42 U.S.C. § 1983,  
8 the statute that creates a remedy for violations of federal rights  
9 committed by persons acting under state law, or *Monell v. Dep't of*  
10 *Social Services*, 436 U.S. 658 (1978), which held that  
11 municipalities are liable under § 1983 only for violations of  
12 federal law that occur pursuant to official governmental policy or  
13 custom.

#### 14 **B. Analysis**

15 The Court's review of Plaintiff's complaint reveals several  
16 deficiencies that warrant dismissal at the screening stage.

17 First, as noted above, the Washington County Sheriff's  
18 Department is the only defendant listed in the caption of the  
19 complaint. However, Plaintiff is required to "name all of the  
20 defendants in the caption of the complaint." *Galligar v. Nooth*,  
21 No. 2:12-cv-01891-PK, 2014 WL 4792924, at \*9 (D. Or. July 29, 2014)  
22 (citing D. Or. LR 10-2(d)). "Plaintiff is cautioned that in any  
23 amended complaint, all defendants against whom he intends to assert  
24 a claim against must be identified as such in the caption of the  
25 complaint." *Tunstall v. Virga*, No. 2:13-cv-699, 2014 WL 4795181,  
26 at \*2 n.2 (E.D. Cal. Sept. 26, 2014) (citing FED. R. CIV. P. 10(a)).  
27 In the event  
28

1 Plaintiff does not know the names of the individual  
2 Defendants, Plaintiff must list the individual unknown  
3 defendants as Defendant John (or Jane) Doe 1, John Doe 2,  
4 and so on in the caption of his . . . amended complaint,  
and, in the body of the . . . amended complaint,  
Plaintiff must allege facts to support how each  
particular Doe defendant violated Plaintiff's rights.

5 *Appell v. Maricopa Cnty.*, No. 14-cv-1218, 2014 WL 4662269, at \*3  
6 n.1 (D. Ariz. Sept. 18, 2014).

7 Second, the Court notes that the Washington County Sheriff's  
8 Department

9 is not a proper defendant in a section 1983 action.  
10 Although municipalities, such as cities and counties, are  
11 amenable to suit under *Monell* . . . , subdepartments or  
12 bureaus of municipalities, such as the Sheriff's  
13 Department, are not generally considered 'persons' within  
14 the meaning of section 1983. Therefore, [any purported]  
15 claim against the . . . County Sheriff's Department is  
not cognizable under section 1983. Further, even if the  
claim was properly brought against [Washington County],  
there are absolutely no allegations regarding a policy or  
custom of the county that would suffice to sufficiently  
state a claim under section 1983.

16 *Daskalakis v. FBI*, No. 4:10-CV-221-BLW, 2011 WL 1900439, at \*5 (D.  
17 Idaho Apr. 28, 2011); see also *Salmon v. Kern Cnty. Sheriff's*  
18 *Dep't*, No. 1:13-cv-00725, 2013 WL 2318906, at \*5 (E.D. Cal. May 28,  
19 2013) ("Given its status as a department of the County of Kern, the  
20 Sheriff's Department is not the proper defendant for these claims.  
21 Therefore, the claims for violations of civil rights by Kern County  
22 Sheriff's Department are DISMISSED.").

23 Third and finally, the Court notes that Plaintiff submitted a  
24 nineteen-page, handwritten complaint that fails to comply with  
25 Federal Rule of Civil Procedure 8(a)—which requires "a short and  
26 plain statement of the claim showing that the pleader is entitled  
27 to relief." FED. R. CIV. P. 8(a)(2). Instead, Plaintiff filed a  
28 complaint that is comprised, in large part, of frivolous

1 allegations that have no basis in law or fact. See generally  
 2 *Daskalakis*, 2011 WL 1900439, at \*5 ("A complaint may be dismissed  
 3 as frivolous if it is premised upon 'fantastic or delusional  
 4 scenarios,' infringement of a legal interest that does not exist or  
 5 outlandish theories."). For example, under his statement of claims  
 6 section, Plaintiff states:

7 I find the Captain of the Washington County Sheriff has  
 8 been in whispered tones been guilty of murder. I find him  
 9 the biggest pickle in a jar of rotten pickles. I find him  
 10 as the biggest pickle amid a full jar of 302 sworn small  
 11 pickles[,] the greatest in the pickle mason jar. When I  
 12 was in East Oakland [in] the middle of August, we in  
 13 California had a jar of 6.1 on the Ricktor [sic] Scale.  
 14 I will testify this is a Mason jar and the biggest pickle  
 needs to be removed. In my work for the Central  
 Intelligence Agency he has done a destruction amid  
 nations as I was involved in Foreign Intelligence and a  
 totally comprehensive totally amid these United States,  
 a power conflicting [sic] with the policies of Richard  
 Millhouse, Doctor Henry Kissinger and amid the policies  
 of former Bill Clinton.

15 (Compl. Attach. 1 at 2.)

16 In light of the foregoing, Plaintiff's complaint against the  
 17 Washington County Sheriff's Department should be dismissed without  
 18 prejudice and with leave to amend. See *Lucas v. Dep't of Corr.*, 66  
 19 F.3d 245, 248 (9th Cir. 1995) (per curiam) ("Unless it is  
 20 absolutely clear that no amendment can cure the defect, . . . a pro  
 21 se litigant is entitled to notice of the complaint's deficiencies  
 22 and an opportunity to amend prior to dismissal of the action.").

23 As to Plaintiff's motion for appointment of pro bono counsel,  
 24 "there is generally no constitutional right to counsel in a civil  
 25 case. However, pursuant to 28 U.S.C. § 1915(e)(1) . . . , this  
 26 court has discretion to request volunteer counsel for indigent  
 27 plaintiffs in exceptional circumstances." *Wang v. Unknown*, No.  
 28 3:12-CV-01858-KI, 2012 WL 5356034, at \*1 (D. Or. Oct. 30, 2012)

(internal citations and footnote omitted). The substance of Plaintiff's complaint convinces the Court that exceptional circumstances are not present here. The Court may consider a renewed motion for appointment of pro bono counsel in the event Plaintiff files an amended complaint that eliminates frivolous allegations and demonstrates a likelihood of success on the merits. *Cf. id.* (denying motion for appointment of pro bono counsel at the screening stage where the complaint did "not demonstrate a strong likelihood of success on the merits").

#### CONCLUSION

Plaintiff's application (Docket No. 1) to proceed in forma pauperis is granted solely for the purpose of screening his complaint. Plaintiff's complaint should be dismissed with thirty (30) days leave to replead and cure the deficiencies described above, and Plaintiff's motion (Docket No. 4) for appointment of pro bono counsel should be denied based on a lack of exceptional circumstances. In the event Plaintiff fails to file a timely amended complaint, this case should be dismissed with prejudice for failure to state a claim.

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#### SCHEDULING ORDER

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due **December 29, 2014**. If no objections are filed, then the Findings and Recommendation will go under advisement on that date. If objections are filed, then a response is due **January 15, 2015**. When the response is due or

1 filed, whichever date is earlier, the Findings and Recommendation  
2 will go under advisement.

3 Dated this 11th day of December, 2014.

4 /s/ Dennis J. Hubel

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6 DENNIS J. HUBEL  
7 United States Magistrate Judge  
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